

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BEVERLY GERNATT,

Plaintiff,

v.

17-CV-164
ORDER

COMMISSIONER of the Social Security
Administration,

Defendant.

On February 21, 2017, the plaintiff commenced this action. Docket Item 1.

On September 12, 2017, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(B). Docket Item 7.

On November 13, 2017, the plaintiff moved for judgment on the pleadings or, in the alternative, to remand for further proceedings, Docket Item 8; on February 12, 2018, the defendant responded and cross-moved to remand, Docket Item 11; and on March 5, 2018, the plaintiff replied and responded to the cross-motion to remand, Docket Item 12.

On March 15, 2018, Judge Scott issued a Report and Recommendation ("R&R"), finding that the defendant's motion should be granted and that the plaintiff's motion should be denied. Docket Item 13. On March 29, 2018, the plaintiff objected to the R&R, arguing that because she was entitled to benefits after her 55th birthday, this Court should find in her favor for the period after she turned 55, remand only to calculate benefits for that time period, and "remand for rehearing" only "as to the period before her 55th birthday." See Docket Item 14 at 1. The defendant did not respond to the objections.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

This Court has carefully reviewed the thorough R&R, the record in this case, the plaintiff's objection, and the pleadings and materials submitted by the parties. Based on that review, the Court accepts and adopts Judge Scott's recommendation to grant the defendant's motion and deny the plaintiff's motion. The plaintiff can raise her entitlement to benefits after her 55th birthday on remand, and given the parties' agreement that at least part of the case be remanded for reconsideration, there is no reason to decide the issues piecemeal.

For the reasons stated above and R&R, the defendant's motion to remand the case to the Social Security Administration, Docket Item 11, is GRANTED; the plaintiff's motion for judgment on the pleadings, Docket Item 8, is DENIED; the decision of the Commissioner is VACATED; and the matter is REMANDED for further administrative proceedings consistent with this decision and the R&R. The Clerk of the Court shall close the file.

SO ORDERED.

Dated: August 13, 2018
Buffalo, New York

s/Lawrence J. Vilardo

LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE